

## § 700.20

(ii) A greater quantity of the item than needed, except to obtain a minimum procurable quantity;

(iii) Items in advance of the receipt of a rated order, except as specifically authorized by the Department of Commerce (see § 700.41(c) for information on obtaining authorization for a priority rating in advance of a rated order); or

(iv) Any of the following items unless specific priority rating authority has been obtained from a Delegate Agency or the Department of Commerce:

(A) Items for plant improvement, expansion or construction, unless they will be physically incorporated into a construction project covered by a rated order; or

(B) Production or construction equipment or items to be used for the manufacture of production equipment (for information on requesting priority rating authority, see § 700.41).

(v) Any items related to the development of chemical or biological warfare capabilities or the production of chemical or biological weapons, unless such development or production has been authorized by the President or the Secretary of Defense.

(3) Separate rated orders may not be placed solely for obtaining minimum procurable quantities on each order if the minimum procurable quantity would be sufficient to cover more than one rated order.

(b) *Specific item limitations.* Notwithstanding any authorization or requirement to place a rated order stated elsewhere in this part, no person may place a rated order to obtain the following items unless such order is authorized by an official action of the Department of Commerce.

- (1) Copper raw materials.
- (2) Crushed stone.
- (3) Gravel.
- (4) Sand.
- (5) Scrap.
- (6) Slag.
- (7) Steam heat, central.
- (8) Waste paper.

[79 FR 47566, Aug. 14, 2014]

## 15 CFR Ch. VII (1–1–15 Edition)

### Subpart E—Industrial Priorities for Energy Programs

#### § 700.20 Use of priority ratings.

(a) Section 101(c) of the Defense Production Act authorizes the use of priority ratings for projects which maximize domestic energy supplies.

(b) Projects which maximize domestic energy supplies include those which maintain or further domestic energy exploration, production, refining, and transportation; maintain or further the conservation of energy; or are involved in the construction or maintenance of energy facilities.

#### § 700.21 Application for priority rating authority.

(a) For projects believed to maximize domestic energy supplies, a person may request priority rating authority for scarce, critical, and essential supplies of materials, equipment, and services (related to the production of materials or equipment, or the installation, repair, or maintenance of equipment) by submitting a request to the Department of Energy. Further information may be obtained from the Department of Energy, Office of Electricity Delivery and Energy Reliability, 1000 Independence Avenue SW., Washington, DC 20585.

(b) If the Department of Energy notifies the Department of Commerce that the project maximizes domestic energy supplies and that the materials, equipment, or services are critical and essential, the Department of Commerce will determine whether the items in question are scarce, and, if they are scarce, whether there is a need to use the priorities authority.

(1) Scarcity implies an unusual difficulty in obtaining the materials, equipment, or services in a time frame consistent with the timely completion of the energy project. In determining scarcity, the Department of Commerce may consider factors such as the following:

- (i) Value and volume of material or equipment shipments;
- (ii) Consumption of material and equipment;
- (iii) Volume and market trends of imports and exports;

(iv) Domestic and foreign sources of supply;

- (v) Normal levels of inventories;
- (vi) Rates of capacity utilization;
- (vii) Volume of new orders; and
- (viii) Lead times for new orders.

(2) In finding whether there is a need to use the priorities authority, the Department of Commerce may consider alternative supply solutions and other measures.

(c) After the Department of Commerce has conducted its analysis, it will advise the Department of Energy whether the two findings have been satisfied. If the findings are satisfied, the Department of Commerce will authorize the Department of Energy to grant the use of a priority rating to the applicant.

(d) Schedule I to this part includes a list of approved programs to support the maximization of domestic energy supplies. A Department of Energy regulation setting forth the procedures and criteria used by the Department of Energy in making its determination and findings is published in 10 CFR part 216.

[79 FR 47567, Aug. 14, 2014]

## Subpart F—Allocation Actions

SOURCE: 63 FR 31923, June 11, 1998, unless otherwise noted.

### § 700.30 Policy.

(a) Allocation orders will:

(1) Be used only when there is insufficient supply of a material, service, or facility to satisfy national defense requirements through the use of the priorities authority or when the use of the priorities authority would cause a severe and prolonged disruption in the supply of materials, services, or facilities available to support normal U.S. economic activities; and

(2) Not be used to ration materials or services at the retail level.

(b) Allocation orders, when used, will be distributed equitably among the suppliers of the materials, services, or facilities being allocated and not require any person to relinquish a disproportionate share of the civilian market.

[79 FR 47567, Aug. 14, 2014]

### § 700.31 General procedures.

Before the Department of Commerce uses its allocations authority to address a supply problem within its resource jurisdiction, it will develop a plan that includes:

(a) A copy of the written determination made in accordance with section 202 of Executive Order 13603, that the program or programs that would be supported by the allocation action are necessary or appropriate to promote the national defense;

(b) A detailed description of the situation to include any unusual events or circumstances that have created the requirement for an allocation action;

(c) A statement of the specific objective(s) of the allocation action;

(d) A list of the materials, services, or facilities to be allocated;

(e) A list or description of the sources of the materials, services, or facilities that will be subject to the allocation action;

(f) A detailed description of the provisions that will be included in the allocations orders, including the type(s) of allocations orders, the percentages or quantity of capacity or output to be allocated for each purpose, the relationship with previously or subsequently received priority rated and unrated contracts and orders, and the duration of the allocation action (e.g., anticipated start and end dates);

(g) An evaluation of the impact of the proposed allocation action on the civilian market; and

(h) Proposed actions, if any, to mitigate disruptions to civilian market operations.

[79 FR 47567, Aug. 14, 2014]

### § 700.32 Controlling the general distribution of a material in the civilian market.

No allocation action by the Department of Commerce may be used to control the general distribution of a material in the civilian market unless the conditions of paragraphs (a), (b), and (c) of this section are met.

(a) The Secretary has made a written finding that:

(1) Such material is a scarce and critical material essential to the national defense, and